

FEDERAL ELECTION COMMISSION
FIRST GENERAL COUNSEL'S REPORT

MUR 7408

DATE COMPLAINT FILED: Jun. 7, 2018

DATE OF LAST RESPONSE: None submitted

DATE ACTIVATED: Sep. 21, 2018

ELECTION CYCLE: 2018

EXPIRATION OF SOL: Jan. 1, 2020 (earliest);
July 15, 2023 (latest)

COMPLAINANTS:

David Kelley

Gary Gutawsky

RESPONDENTS:

Jessica Morse for Congress and Stephen
Smallcombe in his official capacity as treasurer

**RELEVANT STATUTES
AND REGULATIONS:**

52 U.S.C. § 30101(9)(A)(i)

52 U.S.C. § 30104(a), (b)

11 C.F.R. § 100.111

11 C.F.R. § 104.1(a)

11 C.F.R. § 104.3

INTERNAL REPORTS CHECKED:

Disclosure Reports

FEDERAL AGENCIES CHECKED:

None

I. INTRODUCTION

The Complaint alleges that Jessica Morse for Congress and Stephen Smallcombe in his official capacity as treasurer (the "Committee"), the principal campaign committee for Jessica Morse, a candidate for the U.S. House of Representatives in California's Fourth District, violated provisions of the Federal Election Campaign Act of 1971, as amended, (the "Act"). Specifically, the Complaint alleges that the Committee violated 52 U.S.C. § 30104(b)(4) by

1 failing to report more than \$100,000 in disbursements for mailers related to the Primary
2 election.¹

3 Based on the available information, we recommend that the Commission find no reason
4 to believe that Jessica Morse for Congress and Stephen Smallcombe in his official capacity as
5 treasurer, violated 52 U.S.C. § 30104(b)(4) by failing to report expenditures and disbursements
6 associated with the Committee's direct mail efforts.

7 **II. FACTUAL AND LEGAL ANALYSIS**

8 **A. Background**

9 Jessica Morse was a Democratic candidate for the House of Representatives in
10 California's Fourth Congressional District.² Morse and her authorized campaign committee filed
11 an original Statement of Candidacy and Statement of Organization on July 14, 2017.³ The
12 relevant primary election was held on June 5, 2018.

13 Complainants, residents of California's Fourth District, allege that over a six-week
14 period, they received three mailers (attached to the complaint), each of which contained the
15 disclaimer "Paid for by Jessica Morse for Congress."⁴ The Complaint alleges that the
16 Committee sent these mailers to tens of thousands of voters throughout the Fourth District

¹ Compl. at 1-2 (Jun. 7, 2018). The Committee did not submit a response to the Complaint.

² Morse and incumbent Representative Tom McClintock were the top two vote-getters in the Primary Election. She lost the general election to McClintock.

³ The Committee filed several Amended Statements of Organization, which reflected changes in its address, treasurer and affiliated committees, with the most recent amendment being filed on October 16, 2018. *See* Jessica Morse for Congress Amended Statement of Organization (Oct. 16, 2018), <http://docquery.fec.gov/pdf/548/201810169125549548/201810169125549548.pdf>.

⁴ *See* Compl., Exh. A, B, and C. Complainants David Kelly and Gary Gutawsky were contributors to Morse's closest competitor, the Bateson Campaign. *See* Bateson Campaign 2017 Year-End (Jan. 31, 2018), 2018 April Quarterly (Apr. 15, 2018), Pre-Primary (May 24, 2018), and July Quarterly (Jul. 15, 2018) Reports.

1 during these six weeks, and that the Committee failed to report expenditures for these mailers.⁵

2 In support, the Complaint relies on the Committee's 2018 April Quarterly Report, in which the

3 Committee discloses disbursements totaling \$402.19 for postage and \$3,375.24 for printing

4 during that reporting period (January 1 through March 31, 2018)⁶; and its Pre-Primary Report,

5 in which the Committee disclosed disbursements totaling \$880.39 for postage and \$4,105.08 for

6 printing during that reporting period (April 1, 2018 through May 16, 2018).⁷ In these reports,

7 the Committee does not disclose any loans, debts, and obligations, or any in-kind contributions

8 for postage or printing services related to its direct mail program.

9 Based on the size and scope of the Committee's direct mail program, the Complaint

10 surmises there is reason to believe that the Committee underreported its spending by \$100,000 or

11 more. The Complaint compares the Committee's spending to that of one of Morse's primary

12 opponents, Regina Bateson. Bateson was another Democratic competitor in the primary, and her

13 authorized committee, Bateson for Congress and Rita Copeland in her official capacity as

14 treasurer (the "Bateson Campaign"), disclosed in its Pre-Primary Report spending \$161,200.51

15 for direct mail production for the period April 1, 2018 - May 16, 2018.⁸ By contrast, the Morse

⁵ Compl. at 2.

⁶ See 2018 April Quarterly Report (Apr. 15, 2018), <http://docquery.fec.gov/pdf/173/201804159108210173/201804159108210173.pdf>.

⁷ See 2018 Pre-Primary Report (May 24, 2018), <http://docquery.fec.gov/pdf/202/201805249113327202/201805249113327202.pdf>.

⁸ See Bateson Campaign 2018 Pre-Primary Report (May 24, 2018), <http://docquery.fec.gov/pdf/936/201805249113333936/201805249113333936.pdf>; Amended Pre-Primary Report (Aug. 9, 2018), <http://docquery.fec.gov/pdf/696/201808099119384696/201808099119384696.pdf>. Bateson filed a Termination Report on August 9, 2018, <http://docquery.fec.gov/pdf/384/201808099119385384/201808099119385384.pdf>, and received its Termination Approval from the Commission on August 23, 2018, <http://docquery.fec.gov/pdf/849/201808230300018849/201808230300018849.pdf>.

1 Committee reported spending only \$8,762.90 from January 1, 2018 through May 16, 2018 for
2 printing and mailing.⁹

3 According to the Commission's records, the Morse Committee reported the following
4 disbursements associated with printing and direct mail during the 2018 election cycle:

Payee	Purpose	Dates/Amount spent/Report	Total Amount
Time Printing	printing	2/21/18 – \$2,904.35 (Apr. Qtr.) 3/19/18 – \$162.38 (Apr. Qtr.) 3/23/18 – \$308.51 (Apr. Qtr.) 4/28/18 – \$535.84 (Pre-Prim.) 5/11/18 – \$308.51 (Pre-Prim.) 6/4/18 – \$433.00 (Jul. Qtr.)	\$4,961.10
Print for Progress	printing	4/28/18 – \$2,952.22 (Pre-Prim.) 5/25/18 – \$8,117 (Jul. Qtr.)	\$11,069.22
Gibson Printing	printing	5/21/18 – \$422.72 (Jul. Qtr.)	\$422.72
USPS	postage	4/13/18 – \$701.75 (Pre-Prim.) 6/21/18 – \$49.10 (Jul. Qtr.) 6/26/18 – \$300.00 (Jul. Qtr.)	\$1,092.10
SKD Knickerbocker	direct mail direct mail direct mail/tv ads	5/17/18 – \$29,147.04 (Jul. Qtr.) 5/17/18 – \$10,488.48 (Jul. Qtr.) 5/25/18 – \$200,278.71 (Jul. Qtr.)	\$239,914.23
		Total	\$257,459.37

5 In comparison, the Bateson Campaign reported total disbursements of \$188,761.35 for
6 “printing,” “direct mail production,” and “postage” during the 2018 cycle.¹⁰

⁹ See 2018 April Quarterly Report (Apr. 15, 2018).

¹⁰ See Bateson Campaign 2018 April Quarterly, Pre-Primary and July Quarterly Reports.

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B. Legal Analysis

The Act requires each treasurer of a political committee to file reports of receipts and disbursements, including contributions and expenditures, with the Commission.¹¹ These reports must include the amount and nature of the receipts and disbursements.¹² An "expenditure" is defined as "any purchase, payment, distribution, loan, advance, deposit, or gift of money or anything of value made by any person for the purpose of influencing any election for Federal office."¹³

The Complaint, relying on differences between the spending of the Morse and Bateson Committees, alleges that the Committee underreported disbursements for mailers sent before the primary election. The Complaint, however, was filed before the Committee reported the bulk of its disbursements for direct mail.¹⁴ The Committee ultimately reported spending over \$250,000 for direct mail and television ads in its July Quarterly Report, which was filed on July 15, 2018, approximately a month after the Complaint.¹⁵

Complainants do not give a precise date on which they received the Morse mailers but allege it was during the six weeks before the Primary Election.¹⁶ According to the Committee's reports, it made disbursements apparently significant enough to have been related to the mailers

¹¹ 52 U.S.C. § 30104(a)(1); 11 C.F.R. § 104.1(a).

¹² See 52 U.S.C. § 30104(b)(2), (4); 11 C.F.R. § 104.3(a), (b).

¹³ 52 U.S.C. § 30101(9)(A)(i); 11 C.F.R. § 100.111.

¹⁴ The Complaint was notarized on March 25, 2018 and filed with the Commission on June 7, 2018, two days after the Primary election. It is worth noting that March 25, 2018 was the same date the Committee made its largest disbursements for direct mail production to its primary vendor, SKD Knickerbocker. See Committee 2018 July Quarterly Report.

¹⁵ See 2018 July Quarterly Report (July 15, 2018), <http://docquery.fec.gov/pdf/801/201807159115677801/201807159115677801.pdf>.

¹⁶ Compl. at 2.

1 on April 28th, May 17th, and May 25th, which coincide with the time period during which
2 Complainants allege they received the mailers.¹⁷

3 The available information is insufficient to support a reasonable inference that the
4 Committee underreported its direct mail disbursements. First, the Complaint was filed before the
5 Committee filed its 2018 July Quarterly Report, which disclosed significant spending on voter
6 mail and TV ads. Second, the Committee's reporting appears to comply with the Act and
7 Commission regulations, and the Commission has not issued the Committee any Requests for
8 Additional Information regarding any of its reports. While most of the Committee's
9 expenditures for direct mail and TV ads were not reported until after the Primary Election, the
10 Committee's disclosures complied with the reporting schedule for authorized committees that
11 file quarterly reports.¹⁸ Third, the timing of the disbursements alone is not sufficient to support
12 the conclusion that the Committee underreported its expenditures, absent information that the
13 disbursements occurred on dates other than the ones the Committee reported, or the Committee
14 did not report all of its disbursements.¹⁹ We have no such information. Finally, the Complaint's
15 assumption that a comparison of the timing of the Morse and Bateson disbursements proves the
16 Committee underreported is speculative.

17 Because there is insufficient information to support the allegation that the Committee did
18 not timely report disbursements for its direct mail costs, we recommend that the Commission

¹⁷ These disbursements were reported in the Committee's Pre-Primary Report, which covered April 1-May 15, 2018, and July Quarterly Report, which covered May 16-June 30, 2018.

¹⁸ See FEC 2018 Reporting Deadlines, https://transition.fec.gov/info/report_dates_2018.shtml#quarterly.

¹⁹ Compare MUR 6903 (Lawrence) (finding RTB and conciliating with a committee that failed to file several quarterly reports and failed to disclose all of its receipts, disbursements and debts in its reports); MUR 6966 (Democratic Party of Wisconsin) (finding RTB and conciliating with committee after an audit determined that the committee had misstated and underreported disbursements).

find no reason to believe Jessica Morse for Congress and Stephen Smallcombe in his official capacity as treasurer, violated 52 U.S.C. § 30104(b)(4) by failing to report expenditures and disbursements associated with the Committee's direct mail efforts.

III. RECOMMENDATIONS

1. Find no reason to believe Jessica Morse for Congress and Stephen Smallcombe in his official capacity as treasurer, violated 52 U.S.C. § 30104(b)(4) by failing to report expenditures and disbursements associated with the Committee's direct mail efforts;
2. Approve the attached Factual and Legal Analysis;
3. Approve the appropriate letters; and
4. Close the file.

Lisa J. Stevenson
Acting General Counsel

Kathleen M. Guith
Associate General Counsel for Enforcement

12.20.18
Date


Stephen Gura
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